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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,045	04/16/2001	William P. Apps	RPC 0544 PUS	5964

22045 7590 03/18/2003

BROOKS & KUSHMAN
1000 TOWN CENTER 22ND FL
SOUTHFIELD, MI 48075

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/836,045

Applicant(s)

APPS, WILLIAM P.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('572), Apps et al. ('461), Apps et al. ('176), Apps ('352), Hammett ('487), Apps et al. ('002) and Apps et al. ('874).

Each of the references discloses a low depth bottle tray having an interior grid structure comprised of at least ten walls (four extending longitudinally and six extending transversely to the container) and three interior columns, a divider wall includes two of the ten walls which are parallel to each other and spaced transversely from each other and are transversely aligned, a divider wall could also include two of the ten walls which are longitudinally aligned with each other (either aligned longitudinally with respect to the container or transversely with respect to the container). A divider wall could also include two of the ten walls which are perpendicular with respect to each other. ~~Hammett ('487) discloses ribs 30 which could be considered to form with the wall from which it extends a "double-walled construction."~~

Claims 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Apps et al. ('793).

A similar line of reasoning applies in this rejection as is stated in the above rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('793), Apps et al. ('572), Apps et al. ('461), Apps et al. ('176), Apps ('352), Hammett ('487), Apps et al. ('002) or Apps et al. ('874) in view of McGrath ('844) and Cornelius et al. ('767).

This rejection is made insofar as the anticipation rejection doesn't disclose ^{div} ~~a two-wall-~~ *each d.w. defining two spaced apart surfaces* divider wall, ~~wherein the two walls are parallel to each other and spaced transversely of each other and connected to the bottom wall and connected to at least two of the same side walls, end walls or interior columns.~~

The primary references disclose the invention except for the divider wall being a double ^{d.w., each d.w. defining two spaced apart surface} walled construction. McGrath and Cornelius et al. teach ~~dividers of double-walled construction~~ ^{the divider spaced} (two walls parallel to each other and spaced transversely of each other and connected to the ~~bottom wall and connected to at least two of the same side walls, end walls or interior columns~~). It would have been obvious to modify the primary references to have ~~dividers of double-walled~~ construction in order to strengthen the divider wall and to provide a greater amount of separation between bottles in the bottle trays so that the bottles will not touch one another or become damaged due to sudden impact loads on the transporting bottle tray.

Applicant's arguments filed December 16, 2002 have been fully considered but they are not persuasive.

Applicant points to examiner's remarks in making a 103 rejection to support a finding that the divider walls are not of double-walled construction. Applicant has not sufficiently discussed the structure of the prior art references to overcome the anticipatory rejections. The art applied in the anticipatory rejection discloses a plurality of double-walled divider walls.

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McGrath clearly discloses in Fig. 25 and 30 that base 50 has a triple-walled construction including two outwardly extending walls which have outwardly facing surfaces which contact bottles supported within the bottle crate and one interior wall formed as a upwardly extending portion of floor 17. An element that is triple-walled construction is double-walled construction.

Applicant has further delineated the claims by mentioning that the bottle retaining pockets are sized to receive a single bottle. If the pocket receives more than one bottle, the pocket is still sized to receive a single bottle.

Applicant doesn't sufficiently respond to the 103 rejection by commenting on the motivation relied upon. Applicant points to the differences between the invention and the secondary references of McGrath ('844) and Cornelius et al. ('767). The difference between the invention and the primary references should be discussed and is of greater importance.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
March 13, 2003